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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,493	04/19/2004	John Temple	MMC-10902/29	3298
7590	02/17/2005		EXAMINER	
John G. Posa Gifford, Krass, Groh, Sprinkle, Anderson & Citkowski, P.C. 280 N. Old Woodward Ave., Suite 400 Birmingham, MI 48009-5394				FLANAGAN, BEVERLY MEINDL
		ART UNIT	PAPER NUMBER	3739
DATE MAILED: 02/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/827,493	TEMPLE, JOHN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Beverly M. Flanagan	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

#### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/20/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

  
BEVERLY M. FLANAGAN  
PRIMARY EXAMINER

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed September 20, 2004 has been made of record and the reference cited therein has been considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan et al. (U.S. Patent No. 5,910,106).

**In regard to claims 1, 2 and 4,** Morgan et al. teach an instrument heater 21, such as for an optical scope 1, comprised of a sheath 23 having an inner wall 25 and an outer wall 27 where between the inner wall 25 and outer wall 27 is a chemical solution used in forming an exothermic reaction, such as sodium acetate and water (see Figures 1-3 and col. 4, lines 52-55). Between the inner wall 25 and the outer wall 27 at the tip 31 of sheath 23 is an activator disk 41 made from a flexible metal article with a plurality of slits, where flexing of the activator disk 41 released minute particles of metal and causes a destabilization of the chemical solution to produce heat (see col. 5, lines 5-35 and Figure 3).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan et al. (U.S. Patent No. 5,910,106) in view of Beane et al. (U.S. Patent Application Publication No. 2002/0022762).

**In regard to claim 3,** Morgan et al. are silent as to a housing to contain the sheath 23. However, Beane et al. disclose a similar warming device for an endoscope 10 where the device 110 has a housing 112 that contains a heating pad 120 into which the endoscope 10 is inserted (see Figure 2A). Beane et al. thus demonstrate that housing for containing a device to heat the insertion tube of an endoscope are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the instrument heater 21 of Morgan et al. with a housing to contain the sheath 23.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan et al. (U.S. Patent No. 5,910,106) in view of Meckstroth (U.S. Patent No. 5,651,757).

**In regard to claim 4,** Morgan et al. are silent as to the sheath 23 being partitioned. However, Meckstroth discloses a similar endoscope warmer 10 comprised of a holster having a plurality of channels 22 through which a heated fluid circulates

(see Figure 1). Meckstroth thus demonstrates that an endoscope warmer having partitions for more effectively circulating the warming fluid are well known in the art. Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the sheath 23 of Morgan et al. with partitions, in the manner disclosed by Meckstroth, to move effectively circulate the chemical solution.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should note the following prior art references disclosing warmers for endoscopes: Brodsky, U.S. Patent No. 5,351,675; Kim, U.S. Patent No. 5,549,543; and Seitzinger et al. U.S. Patent No. 6,234,635.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Wednesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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